

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ENDO PHARMACEUTICALS INC. and)
PENWEST PHARMACEUTICALS CO.,)
)
Plaintiffs,)
) C.A. No. 07-731 (***)
v.)
)
IMPAX LABORATORIES, INC.,)
)
Defendant.)

**NOTICE OF DISMISSAL OF COUNT I OF PLAINTIFFS'
COMPLAINT AND WITHDRAWAL OF PLAINTIFFS' MOTION
FOR EXPEDITED DECLARATORY JUDGMENT RELIEF**

WHEREAS defendant Impax Laboratories, Inc. ("Impax") has represented to plaintiffs Endo Pharmaceuticals Inc. and Penwest Pharmaceuticals Co. (collectively, "Plaintiffs") that the United States Food and Drug Administration has deemed Impax's ANDA 79-087 acceptable for filing and substantive review as of November 23, 2007; and

WHEREAS Plaintiffs received, on December 14, 2007, a new Paragraph IV Notice from Impax with respect to United States Patent Nos. 5,662,933 and 5,958,456;

NOW, THEREFORE, PLEASE TAKE NOTICE THAT, pursuant to Fed. R. Civ. P. 41(a)(1), Plaintiffs hereby dismiss Count I of their Complaint, without prejudice. This dismissal is without waiver of or other prejudice to Plaintiffs' contentions that Impax's prior Paragraph IV Notices (*i.e.*, those that Plaintiffs received prior to December 14, 2007) are null, void and without legal effect. Plaintiffs are maintaining their claim for patent infringement based on Impax's pre-December 14, 2007 Paragraph IV Notices because Impax has refused to withdraw such Notices and continues to take the position that such Notices are valid. Plaintiffs will file a claim for infringement based on the December 14, 2007 Notice within the prescribed 45 day period.

PLEASE TAKE FURTHER NOTICE THAT Plaintiffs also withdraw, without prejudice, their Motion for Expedited Declaratory Judgment Relief (D.I. 6), filed on November 20, 2007, which sought expedited declaratory judgment relief pursuant to Count I of their Complaint.

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Date: December 20, 2007

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2007 I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to:

Mary B. Mattterer
MORRIS JAMES LLP

I further certify that I caused to be served copies of the foregoing document on December 20, 2007 upon the following in the manner indicated:

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